

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

QUALITY BUILDERS WARRANTY  
CORP.

325 North Second Street  
Wormleysburg, PA 17043

\*

\* Case No.:

\*

Plaintiff

\*

v.

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TAYLOR MORRISON OF GEORGIA, LLC

4400 North Point Parkway, Suite 295  
Alpharetta, Georgia 30022

\*

Electronically Filed

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Served its Registered Agent:  
National Registered Agents, Inc.  
1201 Peachtree Street NE  
Fulton, Atlanta, GA 30361

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Defendant

**COMPLAINT FOR BREACH OF CONTRACT AND OTHER RELIEF**

Quality Builders Warranty Corp., ("QBW"), Plaintiff, by its attorney, John A. Gill, Esq., hereby files the following Complaint for Breach of Contract and Other Relief against Taylor Morrison of Georgia, LLC, Defendant, and avers in support hereof the following:

**JURISDICTIONAL STATEMENT**

1. This Court has original jurisdiction in this matter pursuant to 28 U.S.C. 1332(a) since the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different States.

**STATEMENT OF THE CASE**

2. Effective April 30, 2015, Taylor Morrison of Georgia, LLC assumed and was made party to a Builder Agreement with Addendum under which Taylor Morrison of Georgia, LLC was required to enroll all homes it constructed in the QBW Ten Year Warranty Program until March 26, 2019. Taylor Morrison of Georgia, LLC failed to enroll all homes constructed and failed to abide by the enrollment requirements of the assumed Builder Agreement with Addendum. QBW has instituted the within action for breach of contract.

**THE PARTIES**

3. Plaintiff is Quality Builders Warranty Corp. (“QBW”), a Pennsylvania Corporation with its principal place of business situated at 325 North Second Street, Wormleysburg, Cumberland County, Pennsylvania, 17043.

4. Defendant, Taylor Morrison of Georgia, LLC, (“Taylor Morrison) is a Georgia Limited Liability Corporation engaged in the new home building business with its principal place of business situated at 4400 North Point Parkway, Suite 295, Alpharetta, GA 30022.

**BACKGROUND**

5. QBW is a Ten Year New Home Warranty Program

6. New home builders who become members of QBW offer warranties against certain specified defects in the homes they construct.

7. Effective March 26, 2009, QBW and John Thomas Partners (“JEH”) entered into a Builder Agreement with Addendum (the Addendum being part of the Agreement) pursuant to which JEH became a member of QBW’s new home warranty program. (“Builder Agreement

with Addendum"). A true and correct copy of the Builder Agreement with Addendum is attached hereto as Exhibit A.

8. The Builder Agreement with Addendum required JEH to enroll in the QBW Warranty Program all of the new homes that it built while the Builder Agreement with Addendum was in effect. (Exhibit A, ¶ A 6, p.1, and p. 4, Addendum paragraph).

9. The Builder Agreement with Addendum required JEH to maintain its membership in the QBW new home warranty program in five year increments, commencing on March 26, 2009. The Addendum states:

#### ADDENDUM

In consideration for receiving a reduced rate, Builder agrees to maintain its' membership in the QBW program for a period of 5 years to commence on the date this addendum is executed by QBW. Builder agrees to submit for enrollment all homes which Builder or any affiliate constructs during this term and any extensions. In exchange, Builder's rate will be \$ 1.50 /per thousand. The rate is provided based on Builder's anticipated volume. If Builder's volume decreases, QBW reserves the right to increase the Builder's rate for the remaining term. If the Builder's rate is increased for any other reason, Builder may terminate membership. This rate will not apply to buildings with five or more stories, which QBW will determine on a project by project basis. The addendum will renew for like terms unless (30) days prior to the expiration of the term, or any extensions; either party provides the other (30) days advance written notice that they intend not to extend the period entitling the builder to a lower rate. If Builder provides notice, QBW will adjust the Builder's rate upward effective at the end of the then current term. (Exhibit A, p.4)

10. The Addendum was executed by QBW on March 26, 2009.

11. JEH proceeded to enroll the homes it constructed in accordance with the Builder Agreement with Addendum and paid a warranty rate of \$1.50 per \$1,000 of the sale price of each new home.

12. The Addendum renewed for an additional five year period on March 26, 2014 since neither party provided the other the required 30 days advance written notice that they intend not to extend the period.

13. The second five year membership term of JEH commenced on March 26, 2014 and continues until March 26, 2019.

**JEH IS PURCHASED BY TAYLOR MORRISON**

14. On February 26, 2015 Taylor Morrison entered into an Asset Purchase Agreement with JEH.

15. In connection with the Asset Purchase, Taylor Morrison, QBW and JEH executed an Agreement, effective April 30, 2015, under which JEH assigned to Taylor Morrison, and Taylor Morrison accepted, all of JEH's rights, title, interests and obligations in, to and under JEH's Builder Agreement with Addendum. ("Assumption Agreement"). A true and correct copy of the Assumption Agreement is attached hereto as Exhibit B.

16. The JEH Builder Agreement with Addendum was made part of the Assumption Agreement as Attachment A.

17. At the time of acquisition, JEH was in its second year of a five year membership term, which term does not expire until March 26, 2019.

18. The Assumption Agreement states:

Taylor Morrison will be made party to and will be the party designated as the "Builder" under the Builder Agreement as of the Settlement Date. Taylor Morrison will maintain its membership in the QBW program in accordance with the terms of the Builder Agreement executed by JEH. Taylor Morrison's warranty fee rate will be the same as provided to JEH. (Exhibit B, p.1.)

19. Effective April 30, 2015, Taylor Morrison commenced to enroll its newly constructed homes in the QBW Program pursuant to the assumed and assigned Builder Agreement with Addendum.

20. The warranty rate paid by Taylor Morrison was \$1.50 per \$1,000 of the sale price of each new home, which was the same warranty fee rate provided to JEH under its Builder Agreement with Addendum.

21. On March 8, 2017 Gregg Wolski, VP, Strategic Business Development of Taylor Morrison sent an e-mail to QBW stating Taylor Morrison would not be using QBW for "our new warranty program." A true and correct copy of the e-mail is attached as Exhibit C.

22. Section B 1 of the Builder Agreement with Addendum assumed by Taylor Morrison states:

Builder agrees to enroll in the program every home Builder, Builder's Principals, or any entity under Builders or Builder's Principals common control constructs. (Exhibit B, ¶ B 1, p.4).

23. The Addendum paragraph of the Builder Agreement with Addendum assumed by Taylor Morrison states in pertinent part:

In consideration for receiving a reduced rate, builder agrees to maintain its membership in the QBW Program for a period of five (5) years to commence on the date this Addendum is executed by QBW, builder agrees to submit for enrollment all homes which builder or any affiliate constructs during this term and any extensions.(Exhibit B p. 7, Addendum paragraph)

24. On March 9, 2017 QBW sent an e-mail to Taylor Morrison advising that Taylor Morrison was in breach of its Builder Agreement with Addendum, requested Taylor Morrison cure its breach and further requested that Taylor Morrison provide written assurances that it would honor the remaining term of its Builder Agreement with Addendum and enroll all homes it constructs until March 26, 2019. A true and correct copy of the e-mail is attached hereto as Exhibit D.

25. On March 15, 2017 QBW sent an e-mail to Taylor Morrison once again requesting that it comply with its membership obligations. A true and correct copy of the e-mail with attachment is attached hereto as Exhibit E.

26. On March 23, 2017 QBW received a letter from an Attorney representing Taylor Morrison stating that Taylor Morrison was providing a 30 day notice of termination of its membership pursuant to Section B 6 of the Builder Agreement with Addendum. A true and correct copy of the letter is attached hereto as Exhibit F.

27. Taylor Morrison's notice of termination violated the Builder Agreement with Addendum because under the Addendum, the membership term renews for five year periods unless one party gives the other thirty days notice before the expiration of each five year term.

28. Taylor Morrison is attempting to terminate the Builder Agreement with Addendum in the middle of a five year term, which term does not end until March 26, 2019.

29. Taylor Morrison is in breach of the assumed Builder Agreement with Addendum because it had failed to enroll all homes constructed as required.

30. The Builder Agreement with Addendum states in Section B 5, "If Builder fails to enroll any eligible homes as required by this Agreement QBW may seek specific performance or other appropriate relief in legal or equitable proceedings." (Exhibit B, ¶ B 5, pp. 4-5).

31. Taylor Morrison's failure to enroll all homes it constructs is a breach of the Builder Agreement with Addendum and QBW seeks to specifically enforce the obligation of the Builder Agreement with Addendum to compel Taylor Morrison to enroll all homes it constructs, in accordance with QBW's membership requirements, for the period April 30, 2015 until March 26, 2019.

32. In the alternative, QBW seeks damages from Taylor Morrison for homes, which Taylor Morrison has failed to enroll, and is required to enroll, in the QBW Program for the period April 30, 2015 until March 26, 2019, which damages exceed the sum of \$75,000.00.

33. QBW also seeks attorney's fees and costs as authorized by Section B 5 of the Builder Agreement with Addendum.

**WHEREFORE**, Plaintiff, Quality Builders Warranty Corp., demands judgment against Taylor Morrison of Georgia, LLC as follows:

1. That the Builder Agreement with Addendum assumed by Taylor Morrison of Georgia, LLC, Inc. be specifically enforced to require Taylor Morrison of Georgia, LLC to enroll all homes it constructs for the period April 30, 2015 to March 26, 2019 in accordance with the Builder Agreement with Addendum.

2. In the alternative, that Defendant, Taylor Morrison of Georgia, LLC, be ordered to pay damages equal to warranty fees, which QBW was entitled to, for homes not enrolled as required and warranty fees based upon homes projected for the period April 30, 2015 to March 26, 2019, said amounts to be in excess of \$75,000.00, exclusive of interest and costs.

3. Attorney's fees and costs as authorized by Section B 5 of the Builder Agreement with Addendum.

4. Such other relief as deemed appropriate by the Court.

**DEMAND FOR JURY TRIAL**

Pursuant to Fed.R.Civ.P. 38, Plaintiff, Quality Builders Warranty Corp., hereby demands a jury trial.

Respectfully Submitted,

/s/ John A. Gill

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